

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 129 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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HANSMUKH DRESSES

Versus

MADHUR GARMENTS

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Appearance:

MR RJ SHARMA for Petitioner

MR DR BHATT for Respondent No. 1

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 27/02/96

ORAL JUDGEMENT

1. RULE. Mr. D.R.Bhatt waives service of rule on behalf of respondent. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.

2. The petitioner before this Court is the judgment debtor, against whom, in summary suit No. 2610 of 1993, an ex parte decree is passed for amount of Rs. 52,974/- with

interest thereon. It appears that in such suit, after the decree was passed, execution proceedings are filed by the judgment creditor and under the order passed by the Court, the goods from the shop of the judgment debtor were seized by the Court bailiff. There is dispute raised by the judgment debtor about the price of the goods seized. According to panchnama prepared by bailiff, he has seized the goods worth Rs. 74,910/- only while according to the judgment debtor, he has seized the goods worth Rs. 5,91,651/-. In the execution proceeding, the judgment debtor has ultimately deposited the amount of Rs. 75,000/- as against which the amount payable under the decree works out to Rs. 69,000/-. The learned City Civil Judge has vide order dated 29th December, 1995 permitted the judgment creditor to withdraw the decretal amount of Rs. 69,000/- on furnishing bank guarantee and the amount is directed to be paid to the judgment creditor by account payee cheque. The dispute about the seizure and removal of the goods from the shop of the judgment debtor of larger value is not resolved by the executing Court. The dispute to the effect that the goods of inferior quality were returned partially to the judgment debtor is also not resolved by the executing court. It is against such order that the judgment debtor has come to this Court.

3. It is stated at the Bar that the judgment debtor has already moved an application for setting aside the ex parte decree and for restoration of the suit which is pending. However, when a decree is already passed and the decretal amount is already deposited in the Court in execution proceedings, the executing court was justified in imposing the condition and in permitting the judgment creditor to withdraw the amount of Rs. 69,000/- on furnishing bank guarantee. It is directed that such bank guarantee shall be a continuous bank guarantee and shall last till the executing court decides the dispute of the actual value of the goods seized by bailiff from the premises of the judgment debtor. Secondly, it is directed that the amount of Rs. 6,000/- which is excess deposit, shall be returned to the judgment debtor forthwith. Thirdly, it is directed that the executing court shall immediately hold inquiry by permitting the judgment debtor as well as judgment creditor to produce necessary evidence including panchnama drawn by bailiff and other documents and shall decide the question as to whether goods of larger value were seized by court bailiff and in case such a finding is reached, it shall take appropriate action for return of the goods or for payment of value thereof to the judgment debtor.

4. Subject to the aforesaid direction, no further interference in the order of the executing court is called for. Rule is made absolute to the aforesaid extent only. There shall be no order as to costs. The ad interim relief

granted earlier is ordered to be vacated.

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